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Nos. 384, 495, 590, and 591

In the Supreme Court of the United States

October Term, 1938

Guaranty Trust Company of New York, as Trustee Under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, Dated January 1, 1912, petitioner

v.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, et al.

Chemical Bank & Trust Company, as Trustee Under St. Louis Southwestern Railway Company General and Refunding Mortgage, Dated as of July 1, 1930, petitioner

v.

Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, and St. Louis Southwestern Railway Company

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Bethlehem Steel Company, petitioner

v.

Zurich General Accident & Liability Insurance Company, Limited

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Bethlehem Steel Company, petitioner

v.

Anglo-Continentale Treuhand, A. G., et al.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 384

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v.

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v.

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v.

ZURICH GENERAL ACCIDENT & LIABILITY INSURANCE COMPANY, LIMITED

No. 591

BETHLEHEM STEEL COMPANY, PETITIONER

v.

ANGLO-CONTINENTALE TREUHAND, A. G., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

THE QUESTION PRESENTED

The issue [1] before the Court is whether obligations of American debtors entered into under and in contemplation of American law, which are expressed in a stated amount of dollars, and which are held by Americans or by foreigners who acquired such obligations from Americans after the passage of the Joint Resolution of June 5, 1933, 48 Stat. 112, may be discharged by the payment of such stated amount in legal tender dollars, if the obligations contain, in addition to the more usual gold dollar clauses, provisions entitling the holders thereof to payment in foreign currencies in a stated amount equivalent to the gold value of the American dollar at the time the obligations were made. The bondholders are here seeking to recover not the amount in dollars payable on the face of their obligations, but an amount in dollars measured by the exchange value of the foreign

[1] In view of this Court's recent decisions in the various gold and gold clause cases, there would appear to be no substantial question as to the constitutionality of the suggested application of the Joint Resolution.

currencies, which would give them approximately the same amount as they would be entitled to if the gold dollar clauses were enforceable as intended by the obligor and obligee.[2]

It is submitted that the same reasons that led the Court in *Norman* v. *B. & O. R. Co.*, 294 U. S. 240, to refuse to enforce the gold dollar clauses and in *Holyoke Power Company* v. *American Writing Paper Company*, 300 U. S. 324, to refuse to enforce the obligation to pay in legal tender dollars the value of a quantity of gold equal to that contained in a stated amount of gold dollars, require the Court to refuse to enforce the claims of the creditors now before this Court for an amount in dollars equal to the value of a stated amount of foreign currency fixed in relation to the gold value of the American dollar prior to its devaluation.

On the first argument of these cases a comparison was suggested between the obligations here involved and a straight foreign currency obligation. Clearly, the Joint Resolution was never intended to affect international obligations such as, for example, bonds issued by American debtors to foreigners calling for payment solely in a foreign currency. But the instant cases do not present the circumstances of such an international obligation. The instant cases present a situation of a domestic obligation, stipulating the United States gold dollar as the funda-

[2] The bondholders would not receive the full "gold value equivalent" if damages are assessed as of a date after the devaluation of the Swiss franc and the Dutch guilder. See p. 17, *infra*.

mental measure of value, where the bondholders are either Americans or are foreigners who purchased the bonds in this country after the dollar had been devalued or its devaluation had been effectively anticipated in the market price of the bonds. For the reasons hereafter detailed, it is believed that there are such clear and important distinctions between such international obligations and the situation involved in the present litigation as to have warranted the Congress in excluding the one from the scope of the Joint Resolution and at the same time including the other. It is submitted that the decision of this Court should reflect the Congressional intention to make such a distinction between international obligations and the obligations now under consideration.

THE PURPOSE OF THE JOINT RESOLUTION IN RELATION TO THE OBLIGATIONS HERE INVOLVED

The broad purpose of the Resolution and the evil which it was designed to remedy are disclosed upon its face. The title of the Resolution describes it to be a "Joint Resolution To assure uniform value to the coins and currencies of the United States." This Court in *Norman* v. *B. & O. R. Co.*, at p. 316, recognized it to be an essential part of an undertaking by the Congress "to establish a uniform currency, and parity between kinds of currency, and to make that currency, dollar for dollar, legal tender for the payment of debts", and in *Holyoke Water Power Company* v. *American Writing Paper Company*, at p. 340, as a measure to assist in "the maintenance of

our monetary system." The evil to be remedied and the necessity of eradicating it are succinctly stated in the preamble of the Resolution as follows (c. 48, 48 Stat. 112):

> * * * the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. * * *

Recognizing and giving effect to the broad purpose of the Resolution, this Court in *Holyoke Water Power Co.* v. *American Writing Paper Company*, at p. 339, held the Resolution applicable to "transactions whereby gold, coined or uncoined, is to be delivered in satisfaction of a debt expressed in terms of dollars" and to "*transactions whereby a debt is to be discharged, not in bullion, but in dollars, if the number of the dollars is to be increased or diminished in proportion to the diminution or the increase of the gold basis of the currency.*" [Italics added.] Both forms of obligation were stated to be "illustrations of the very mischief that Congress sought to hit." It is submitted that a regard for "the realities of the transaction, its substance and essential purpose" (p. 335) compels the conclusion

that the purpose and effect of the contractual provisions for payment here involved are to provide for the discharge of a dollar debt in a number of dollars to be increased or diminished in proportion to the diminution or the increase of the gold basis of the currency, and accordingly, that such obligations are within the purview of the Joint Resolution.

The primary purpose of the payment provision in the obligations here involved, as was true of the obligations involved in the *Norman* and *Holyoke* cases, was to assure the bondholder that he would receive payment in gold dollars of the standard of value in existence at the time the bonds were issued, or in an equivalent value. Perhaps in order to increase the international market for the bonds here involved, the gold dollar equivalents in foreign currencies were expressly included in the obligation as a matter of convenience to possible foreign purchasers.

But the gold dollar clause remained the fundamental and dominant measure of value. The gold dollar clause, and that alone, afforded protection against devaluation of the dollar or of the stipulated foreign currencies. The foreign currency alternatives were simply a translation of the dollar value at the then gold content of the dollar; these alternatives did not furnish independent protection to the creditor with respect to the devaluation of either American or foreign currencies. It thus appears that the spelling out of the foreign currency equivalent of the gold dollar in the multiple currency bonds simply made it easier for the foreigners to understand what they

would be getting in terms of their own currency; and the provisions for payment in their own countries enabled them to obtain their own currencies without engaging in a foreign exchange transaction.[3] This conclusion is reinforced by the fact that while the great bulk of American obligations held by foreigners contained gold clauses, only a very small fraction contained multiple currency provisions;[4] and by the fact that a large amount of multiple currency obliga-

[3] There was another minor benefit accruing to the creditor by virtue of the multiple currency provision. Fluctuations in exchange rates existed in the narrow range between the gold points of the stipulated currencies, all of which were on a gold basis. The creditor was thus in a position to call for payment in that stipulated currency which at the time was selling at the highest premium within such range. It may well be that this minor advantage accruing to the creditor, plus the creditor's avoidance of the expense of the foreign exchange transaction necessary to acquire the stipulated currency desired, enabled the debtor to sell its bonds at a few points higher than if they had contained simply a gold dollar clause. However, this fact is without significance in relation to the issue in these cases.

[4] According to Treasury estimates, approximately 90 percent of American obligations owned by foreigners contained straight gold-clause provisions, entitling the holders to gold dollars or an equivalent amount of United States currency, while approximately 10 percent of American obligations owned by foreigners contained multiple currency provisions. This indicates that foreigners had no objection to receiving American currency so long as they were entitled to receive the old gold dollar or an equivalent amount of United States currency, and that they did not purchase multiple currency obligations as a protection against the possibility of such foreign-exchange control as would prevent them from transferring their United States currency into other currencies.

tions were limited in that feature to payments of interest, as distinguished from principal.[5]

It may truthfully be said that the expectations of the creditor are disappointed and frustrated by the suggested application of the gold clause resolution. This disappointment of the creditor, however, similarly existed in the case of a straight gold dollar contract. The question at issue is not the expectation of the creditor or the intention of the debtor, but rather the intention of the Congress of the United States in adopting the Joint Resolution.

The problem facing Congress at the time it enacted the Joint Resolution may be summarized as follows:

Gold was required to be delivered to the Federal Reserve banks and none could be paid out except under special license. The President had been authorized by the Act of May 12, 1933, 48 Stat. 31, 51–53, to revalue the dollar. The "dollar had not yet been devalued. But devaluation was in prospect and a uniform currency was intended" (294 U. S. 240, 314). There were outstanding approximately $100,000,000,000 of obligations containing some form of a gold clause. To have reduced the

[5] According to Treasury estimates, a large portion of the multiple currency obligations issued by American debtors contained such provision with respect to payment of interest only. See, e. g., Appendix E, *infra*. If bondholders, in addition to desiring a convenient place and medium of payment, feared the exchange risk in not being able to convert dollars into the currencies of their respective countries, they would have at least insisted that the optional currency provision apply to payment of principal as well as interest.

gold content of the dollar by 40 percent while such gold clause obligations remained binding would have been impossible as a practical matter since it would have meant the increase by approximately $70,000,000,000 of the obligations of the debtors and a consequent disruption of our economy. Accordingly, in order to revalue the dollar as desired, it became necessary to permit the discharge, dollar for dollar, of ~~all those~~ domestic obligations the dollar value of which would have increased automatically and proportionately with a reduction in the gold content of the dollar.

It is thus seen that contracts of the type here involved, regardless of their aggregate dollar amount, were just as truly an interference with and an obstacle to the Congressional exercise of monetary powers as were the various other types of gold clause obligations; and that uniform and equitable treatment of the whole problem required that contracts of the type here involved be dealt with in the same way as other forms of gold clause obligations. The obligations here involved are thus within the scope of the Joint Resolution viewed from the standpoint of its purpose. It is submitted that they are likewise within its language.

The language of the Resolution is comprehensive. With respect to domestic obligations having a gold clause, the purpose or effect of which is to increase the dollar value of the obligation automatically and proportionately with the reduction of the gold content of the dollar, the Resolution reveals an intention "to stop the whole business" as did the

Eighteenth Amendment with respect to the traffic in liquor. Cf. *Grogan* v. *Walker & Sons*, 259 U. S. 80, 89; *Danovitz* v. *United States*, 281 U. S. 389 397. In view of the extensive discussion of the language of the Resolution in the briefs and oral argument of the parties, it is unnecessary to do more than to indicate that the Resolution is plainly susceptible of the construction for which we contend. The provision in the bonds and coupons for the payment in United States gold coin is clearly a "provision contained in" an "obligation", and a provision which purports "to give the obligee a right to require payment in gold or a particular kind of coin or currency" of the United States. The obligation in which such provision is contained is an obligation, as that term is defined in the Resolution, "payable in money of the United States", since the obligation is capable of being paid in dollars. In view of the fact that in the *Holyoke* case payment could be made in gold bullion as well as in currency of the United States, and that payment of either would discharge the obligation, our suggested interpretation of the words "obligation" and "payable" is implicit in this Court's holding in that case.

If the Joint Resolution had not embraced domestic obligations of the kind here under consideration, such obligations would have produced the "disparity of conditions" described by this Court in the *Norman* case, in considering the "dislocation of the domestic economy" which would result if "debtors under gold clauses should be required to pay one dollar and sixty-

nine cents in currency while respectively receiving their taxes, rates, charges and prices on the basis of one dollar of that currency." (294 U. S. 240, 315, 316.) Here, just as in the *Norman* case, the intention of Congress to establish a uniform monetary system with parity between different kinds of currency would be frustrated were the Joint Resolution held to be inapplicable. Not only would American debtors be required to make payments on one basis while receiving income determined on another basis, but on the other hand American creditors, and foreign creditors who have voluntarily entered the American economy and acquired these obligations after June 5, 1933, would receive a windfall such as was denied to the plaintiffs in the *Norman* and *Holyoke* cases and also in *Perry* v. *United States*, 294 U. S. 330, and which in the latter case was characterized by this Court as an "unjustified enrichment" (p. 358).

No sound reason appears why foreigners who are in the position of those involved in these cases and who hold obligations of the character involved in these cases should be regarded as being in a different position from Americans or foreigners holding domestic obligations payable solely in United States gold coin. It is clear that Americans holding such gold coin obligations are only entitled to receive payment of such obligations dollar for dollar in legal-tender currency. *Norman* v. *B. & O. R. Co., supra; Holyoke Water Power Company* v. *American Writing Paper*

Company, supra.[6] It is equally clear that foreigners holding such obligations containing a straight gold coin clause are also required to accept payment in this country dollar for dollar in legal-tender currency. *Compania de Inversiones Internacionales* v. *Industrial Mortgage Bank of Finland*, 269 N. Y. 22, 198 N. E. 617; certiorari denied, 297 U. S. 705.[7]

As previously indicated, it is believed the Joint Resolution is inapplicable to international obligations such as those involved in a sale of bonds to foreigners by an American debtor stipulating for payment exclusively in the currency of the country of which the foreigners are nationals. In the first

[6] It may also be of interest to note that, so far as we have been able to ascertain, nearly every foreign court that has had occasion to pass upon the question has applied the Joint Resolution to gold dollar obligations issued by foreign governments and nationals thereof whether owned by Americans or others. *Rex* v. *International Trustee for the Protection of Bondholders A. G.* [1937] A. C. 500 (H. of L.); Judgment of the Swedish Supreme Court of January 30, 1937 (Swedish Government gold dollar loan), 36 Bull. I. J. I. 327, translated into English in 3 Guldklausulmalet (Stockholm, 1937) 130 at 147; Judgment of the Swedish Supreme Court of January 30, 1937 (Kreuger and Toll secured debentures payable in United States gold coin and containing provisions for payment in pounds sterling, Swedish crowns, Dutch guilders and Swiss francs), Nytt Juridiskt Arkiv (1937) pp. 17–36; Judgment of the Norwegian Supreme Court of December 8, 1937, 38 Bull. I. J. I. 71; Judgment of City Court of Helsingfors of Dec. 23, 1937, 38 Bull. I. J. I. 280; Opinion of the Supreme Court of Austria of Nov. 26, 1935, J. D. Int. 1936, pp. 442 and 717. (Nussbaum, Money In The Law (1939) pp. 387 et seq.).

[7] See footnote 4, *supra*.

place, such an obligation is clearly not within the language of the Joint Resolution, which defines the term "obligation" as "an obligation payable in money of the United States." Secondly, obligations payable solely in a foreign currency do not disclose an intention to make the United States gold dollar the measure of value of the obligation. Thirdly, even though revaluation of the dollar may have the effect of increasing to an American debtor the cost of discharging international obligations payable in a foreign currency, there are equities so strongly in favor of the creditor in such a situation as to have entirely warranted Congress in deciding that the debtor rather than the creditor should bear the consequences of the revaluation of the dollar. Ordinarily, the fundamental purpose of international obligations of this character is to meet the desire on the part of the foreigner to receive payment in the currency of his own country where he lives and transacts business and in which currency his debts are payable. Unless the foreigner can feel confident that he will be repaid in his own currency a serious obstacle to the making of international loans is created. Similarly, a serious obstacle to international trade would result if a foreigner selling his merchandise to an American were to be uncertain as to his right to require payment in his own currency. Congress recognizing the merit of the position of a creditor in these and comparable situations very properly left the consequences of the revaluation of the dollar to be borne in such

instances by the debtor. However, there being no such need or justification for protecting the expectation of creditors in a situation such as that involved in the present cases, Congress appropriately included these obligations within the scope of the Joint Resolution.

It is important also to observe that the Court is not called upon in the present litigation to decide the applicability of the Joint Resolution to a bond containing a gold dollar clause as well as foreign currency clauses where there is evidence to justify the application of the law of a foreign country rather than the law of this country as the proper law to govern the contract,[8] as in the case of a bond sold in

[8] It is true that in the case of the Bethlehem bonds some were sold in England and Holland, and were presumably paid for in sterling and guilders, and acquired by the residents of such countries, respectively. It is to be noted, however, that the sole consideration received by the debtor for all of the bonds was paid in United States dollars (R. 591, 70). Moreover, there has been no showing in the instant cases that the bonds sued on were those originally sold abroad or had been owned by residents of a foreign country since at least prior to the passage of the Joint Resolution. It is only fair to point out that it appears from the records of the cases before the Court (R. No. 590, 25–29; R. No. 591, 57–60) that the Bethlehem Steel Company, with respect to both the Bethlehem and the Lackawanna bonds, has been paying the stipulated foreign currency to holders of such obligations who submit evidence that they are bona fide residents of foreign countries and that such obligations have been owned by a bona fide resident of a foreign country since prior to June 5, 1933. There is reason to believe that other debtors of such multiple currency obligations have been following a similar practice.

a foreign country to a citizen of that foreign country and paid for in the currency of that country. Compare *Rex* v. *International Trustee for the Protection of Bondholders A. G.* [1937] A. C. 500 (H. of L.).

THE FAIRNESS OF THE SUGGESTED APPLICATION OF THE JOINT RESOLUTION

The facts in the present cases not only illustrate the appropriateness of applying the Resolution to the obligations here involved but leave no doubt of the fairness of such application. All of the obligors in the contracts involved in these cases are American corporations (R. No. 384, 128, 158; No. 495, 254; No. 590, 7; No. 591, 7). The obligations involved in No. 384 were issued in this country to an original group of American purchasers, payment for such obligations being made in United States money (R. No. 384, 132, 133, 160). The obligations involved in No. 591 were sold by the issuing corporation to a group of American bankers, and the sole consideration received by the issuing corporation therefor was United States dollars (R. No. 591, 70). The obligations involved in No. 590 were sold partly to stockholders and partly to New York bankers, and it does not appear from the record that the issuing corporation received payment therefor in any foreign currency (R. No. 590, 50, 51). In all three cases the business of the issuing corporations was almost entirely transacted in the United States, their property was located in the United States, and the obligations were secured by mortgages on prop-

erty situated in the United States (R. No. 384, 17, 128, 129, 157, 158; No. 590, 7, 8, 13, 14, 50–53; No. 591, 70–83). The amount of foreign currency which might be elected by the obligees in all three cases was determined by the value of the United States gold dollar as of the date on which such obligations were issued [9] (R. No. 384, 129–131, 134; No. 590, 12, 13; No. 591, 27–30). The great bulk of outstanding obligations of the character involved in No. 384 is held by American citizens and there is nothing in the records to indicate that a different situation exists in respect of the obligations involved in Nos. 590 and 591 (R. No. 384, 135). So far as appears from the records in all three cases no demand for payment in foreign currency was made prior to June 5, 1933 (R. No. 384, 134). It does not appear that any of the bondholders represented by the petitioner in No. 384 are foreigners (R. No. 384, 135). The bondholders in Nos. 590 and 591 are foreign corporations which, it appears from the records, acquired the bonds and coupons involved in suit from residents of the United States subsequent to June 5, 1933, and, as alleged by the debtors, with full notice and knowledge of the Joint Resolution of June 5, 1933, and with intent to evade the application thereof (R. No. 590, 17, 29, 42, 52–55; No. 591, 37, 38, 41, 54, 63–66). There is reason to believe that at least

[9] The bonds involved in No. 495, which are now held by an American corporation as trustee, do not actually contain any foreign currency provision. The petitioner in that case, however, apparently contends that it occupies substantially the same position as regards payment as does the petitioner in No. 384 (R. No. 495, 22–24, 129, 204–252, 256, 260; Petitioners Brief, pp. 2–8).

one of the foreign corporations here involved is, and for many years has been, doing business on a large scale in this country.[10] Under such circumstances it would seem entirely just to treat the bondholders exactly the same as the holders of straight gold-clause obligations.

If, as indicated in the tables prepared by the Treasury Department and appearing in Appendices B and C, *infra*, the dollar prices paid by the various creditors involved in these actions were approximately the par dollar amount of the bonds, and if the Joint Resolution were to be held inapplicable to such obligations, the windfall in dollars to such creditors would be approximately 69 percent if the measure of damages were determined as of a date prior to September 27, 1936, when the Dutch guilder and the Swiss franc were revalued; and if the measure of damages were determined as of some date thereafter the windfall would be approximately 32 percent where demand was made for payment in Dutch guilders, and 16 percent where demand was made for payment in Swiss francs. In this connection it is also of interest to note that if the Joint Resolution is held applicable to such obligations, the bondholders in Nos. 590 and 591 will, as indicated in the tables in Appendices B and C, nevertheless receive a substantially larger amount in terms of guilders and Swiss francs than that represented by the purchase price of such obligations.

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[10] See Best's Insurance Reports, Casualty, Surety and Miscellaneous (1938), pp. 494–6.

Further confirmation of the fairness of the result herein suggested is to be found in the practically universal reduction in the gold values of currencies. The chart printed in Appendix A, indicating the extent to which currencies of leading countries have depreciated from their pre-war gold parity, reveals the fact that practically all currencies have been depreciated as much or more than the dollar except the Swiss franc and Dutch guilder. The Swiss franc has been depreciated approximately 31 percent. The Dutch guilder has been depreciated approximately 22 percent. The dollar has been depreciated approximately 41 percent. Such worldwide depreciation emphasizes the windfall aspect of allowing bondholders in the situation now before the Court to recover an amount of dollars in excess of the dollar face amount of the bonds and coupons.

CONCLUSION

For the foregoing reasons it is submitted that the Joint Resolution is applicable to the obligations here involved.

Respectfully submitted.

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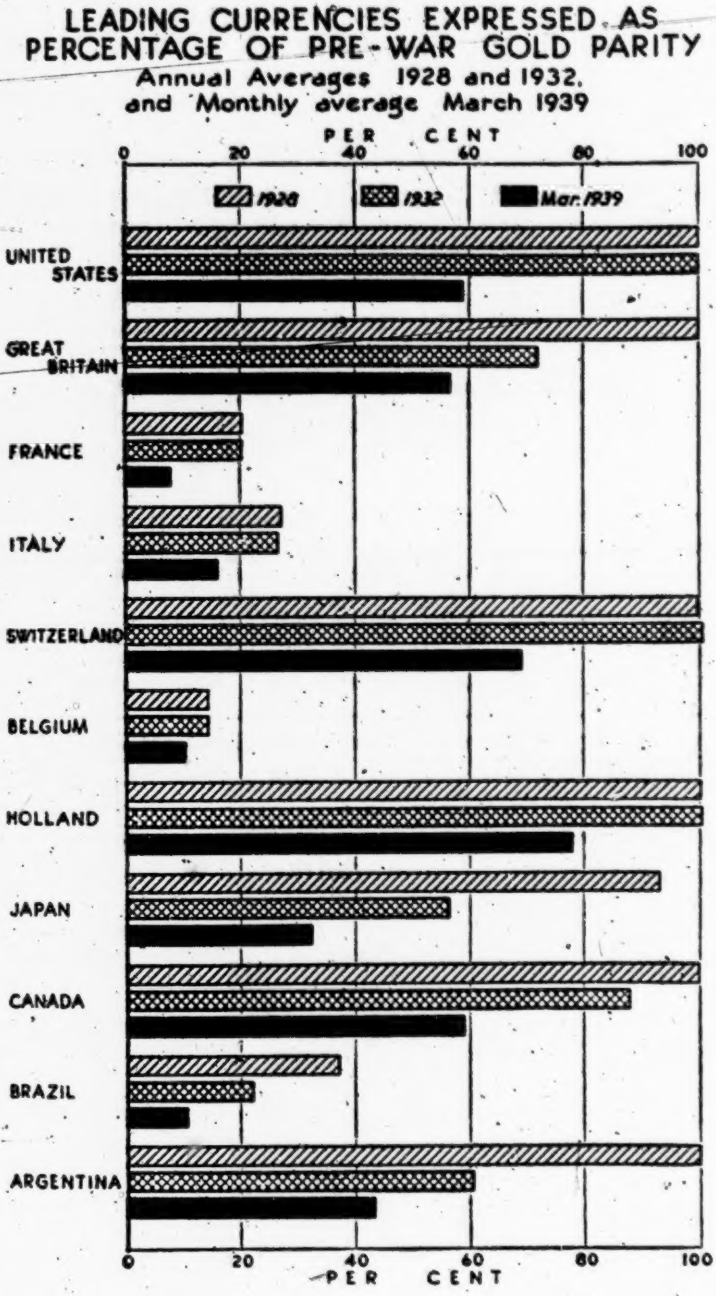
APRIL 1939.

APPENDIX A


LEADING CURRENCIES EXPRESSED AS PERCENTAGE OF PRE-WAR GOLD PARITY
Annual Averages 1928 and 1932, and Monthly average March 1939
PER CENT
0
20
40
60
80
100
1928
1932
Mar. 1939
UNITED STATES
GREAT BRITAIN
FRANCE
ITALY
SWITZERLAND
BELGIUM
HOLLAND
JAPAN
CANADA
BRAZIL
ARGENTINA
0
20
40
60
80
100
PER CENT

APPENDIX B

Prices estimated to have been paid by Zurich General Accident and Liability Insurance Company, Ltd., for certain Lackawanna Steel Company first consolidated mortgage bonds, 5's of 1950 [1]

Dates of purchases [2]	Par value	Average price quotations in dollars per $100 bond	Estimated total amount paid in dollars	Average rate of exchange in Swiss francs at time bonds were purchased	Swiss franc equivalent of estimated dollar price paid for the bonds at time of purchase	Amount bondholders can obtain in Swiss francs at current rate of exchange [3] if redemption price of 105 is paid in current dollars
					Swiss franc	*Swiss franc*
Nov. 9, 1933–Dec. 13, 1933	$100,000	$98.75	$98,750	$0.309288	319,282	468,311
Jan. 11, 1934–Aug. 22, 1934	198,000	104.40	206,712	.322615	640,739	927,256
Aug. 9, 1934	25,000	104.00	26,000	.327475	79,395	117,078
Total	323,000	102.62	331,462	.318893	1,039,416	1,512,645

[1] In June 1937 these bonds were called for payment on Sept. 1, 1937, at 105 (Moody's "Industrials," 1938, p. 2938).

[2] See R. No. 890, 42.

[3] On April 22, 1939, $0.22421 per Swiss franc.

Treasury Department, Division of Research and Statistics. April 24, 1939.

APPENDIX C

Prices estimated to have been paid for certain Bethlehem Steel Corporation first lien and refunding mortgage, Series A, 5 percent bonds, due May 1, 1942 [1]

BONDS PURCHASED BY THE ANGLO-CONTINENTALE TREUHAND A. G.

Dates of purchase [2]	Par value	Average price quotations in dollars of purchases on dates specified [3]	Estimated total amount paid in dollars	Average rate of exchange in Guilders on dates specified [3]	Guilder equivalent of estimated dollar price paid for the bonds on dates specified [3]	Amount bondholders can obtain in Guilders at current rate of exchange [4] if redemption price of 105 is paid in current dollars
Specified dates between Sept. 12, 1933 and Aug. 7, 1934	$350,000	$105.15	$368,012	$0.648260	*Guilders* 567,692	*Guilders* 692,345

BONDS PURCHASED BY THE MONDIALE HANDELS-UND VERWALTUNGS A. G.

Dates of purchase	Par value	Average price	Estimated total	Average rate	Guilder equivalent	Amount bondholders can obtain
Specified dates between Sept. 18, 1933 and Aug. 1, 1934	$27,000	$107.11	$28,920	$0.655087	*Guilders* 44,147	*Guilders* 53,409

[1] In August 1937, these bonds were called for payment on November 1, 1937, at 105 (Moody' "Industrials," 1938, p. 2938).

[2] See R. No. 591, 63-66.

[3] Weighted by the par value of bonds purchased on dates specified.

[4] On April 22, 1939, $0.530805 per guilder.

Treasury Department, Division of Research and Statistics. April 24, 1939.

APPENDIX D

Bonds of American corporations, interest on which is payable at the option of the holder either in American dollars or in one or more foreign currencies at a fixed rate of exchange[1]*—by type of currency option*

[Amounts in millions of dollars and as of December 31, 1933]

TOTAL

	Total outstanding	Foreign holdings
Payable in American and Canadian dollars	2	
Payable in American dollars, Canadian dollars, and Sterling	11	
Payable in American dollars and Sterling	214	15
All other options	307	22
Total	534	37

NOW[2] OUTSTANDING AND NOT IN DEFAULT

	Total outstanding	Foreign holdings
Payable in American and Canadian dollars		
Payable in American dollars, Canadian dollars, and Sterling	11	
Payable in American dollars and Sterling	102	9
All other options	102	13
Total	215	22

NOW[2] IN DEFAULT

	Total outstanding	Foreign holdings
Payable in American and Canadian dollars		
Payable in American dollars, Canadian dollars, and Sterling		
Payable in American dollars and Sterling	112	6
All other options	150	6
Total	262	12

NOW[2] CALLED

	Total outstanding	Foreign holdings
Payable in American and Canadian dollars	2	
Payable in American dollars, Canadian dollars, and Sterling		
Payable in American dollars and Sterling		
All other options	55	3
Total	57	3

[1] Bonds selected and data on outstanding amounts and foreign holdings supplied by the Bureau of Foreign and Domestic Commerce. Excludes issues in default on December 31, 1933.

[2] April 1939.

Treasury Department, Division of Research and Statistics.

APPENDIX E

New York City bonds containing a provision for the payment of interest in dollars or sterling at the option of the holder,[1] classified by years of issuance and of maturity

Year of issuance	Amount	Year of maturity	Amount
1908	$12,000,000	1958	$22,000,000
1909	80,500,000	1959	50,500,000
1911	60,000,000	1960	60,000,000
1912	35,000,000	1962	65,000,000
1913	45,000,000	1963	45,000,000
1914	65,000,000	1964	65,000,000
	307,500,000		307,500,000

[1] Tabulated from Moody's "Governments" for 1939. The principal of all the bonds is payable only in United States dollars. The dollar-pound rate of exchange on April 19, 1939, was $4.679. So long as the pound is less than the rate of approximately $4.87 specified in the bonds, it is to the advantage of the bondholders to demand payment of interest in dollars rather than sterling. The Treasury Department has learned that since the summer of 1935 payments of interest in sterling have been restricted to British nationals with British residence, and that New York City made payments of interest in sterling, as follows:

1935	£34,537
1936	£19,011
1937	£8,087
1938	£4,640
1939 (to April	None

The Treasury Department does not know of any outstanding multiple currency bonds of states, municipalities, etc., of this country other than those issued by New York City.

APPENDIX F

Bonds interest on which is payable in dollars and also at a fixed rate of exchange in one or more foreign currencies [1]

[Millions of dollars]

Debtor	Currencies in which payable (See Legend)				Total
	1-2	1-2-3	1-3	Other	
New York City			320	[2] 32	352
United States corporations	3	54	306	113	476
Other corporations	445	502	150	43	1,140
Dominion of Canada [3]	225	374			599
Canadian provinces and municipalities	578	364	11		953
Governments other than United States and Canada	6	10	216	149	381
Total	1,257	1,304	1,003	337	3,901

Legend:

1-2—American and Canadian dollars.

1-2-3—American dollars, Canadian dollars and Sterling.

1-3—American dollars and Sterling.

Other—All other options.

[1] Tabulation based on pamphlet of A. Iselin and Company. Issues under $1 million and issues in default not included in source. Probably incomplete. Exact date unknown but probably late 1933 or 1934.

[2] Since 1933 New York City has retired the $32,000,000 of its obligations which contained a provision for the payment of interest in French francs as well as in dollars.

[3] Including guaranteed obligations.

Treasury Department, Division of Research and Statistics. April 21, 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1939

P. 4 dissent

SUPREME COURT OF THE UNITED STATES.

Nos. 384 and 495.—October Term, 1938

Guaranty Trust Company of New York, as Trustee Under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, Dated January 1, 1912, Petitioner,
384 *vs.*
Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, et al.

Chemical Bank & Trust Company, as Trustee Under St. Louis Southwestern Railway Company General and Refunding Mortgage, Dated as of July 1, 1930, Petitioner,
495 *vs.*
Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, and St. Louis Southwestern Railway Company.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[May 22, 1939.]

Mr. Justice Black delivered the opinion of the Court.

In the bankruptcy reorganization of the St. Louis Southwestern Railway Company, a Missouri Corporation, petitioners filed claims for bondholders. They asserted a right under the bonds to be paid in Dutch guilders, and asked that their claims—based upon guilder value—be allowed for $37,335,525.12. The trustee in bankruptcy contended, and the courts below held that the Joint Resolution of June 5, 1933,[1] made the bonds dischargeable by payment of current legal tender United States money,[2] and petitioners'

[1] 48 Stat. 112, 31 U. S. C. 463.

[2] 98 F. (2d) 160, 179. The Court of Appeals for the Second Circuit previously held to the contrary, Anglo-Continentale, etc. v. St. L. Southwestern Ry. Co., 81 F. (2d) 11, cert. den. 298 U. S. 655, and the Court of Appeals of New

claims were accordingly allowed for $21,638,000.00, the face amount of their bonds in dollars.

These bonds, secured by a trust mortgage, were issued and sold in the United States in 1912. Purchasers paid and the railroad received United States dollars, and until 1936 interest was regularly paid in dollars.

The asserted right to guilder payment rests upon a provision of the bonds concededly granting holders an option to elect payment in dollars, guilders, pounds, marks, or francs. This multiple currency provision was authorized by the following terms of the mortgage securing the bonds:

"... the ... Bonds may be payable, at the option of the holder, both as to principal and interest, at some one or more of the following places in addition to the City of New York, and in the moneys current at such respective places of payment, at the following rates of exchange or equivalents of $1,000, viz.: In London, England, £205.15.2 Sterling, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, 4200 marks, D. R. W., or in Paris, France, 5180 francs; ..."

The bonds themselves provide:

"St. Louis Southwestern Railway Company, ... for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder, of this bond, on the first day of January, 1952, at its office or agency in the Borough of Manhattan, City and State of New York, One Thousand Dollars in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed January 1, 1912, or in London, England, £205 15s 2d, or in Amsterdam, Holland, 2490 guilders, or in Berlin, Germany, marks 4200, D. R. W., or in Paris, France, 5180 francs, and to pay interest thereon, at the rate of five per cent. per annum, from the first day of January, 1912, in said respective currencies, semi-annually ..."

Since the parties agree that the terms of the bonds granted holders an option to elect payment in guilders, we must determine whether, despite this option, the Joint Resolution operated to make the bonds dischargeable in current United States legal tender—a dollar of legal tender to be repaid for every dollar borrowed.

York did likewise in Zurich, etc. Co. v. Bethlehem Steel Co. and Anglo-Continentale, etc. v. Bethlehem Steel Co., 279 N. Y. 495, 790, Nos. 590 and 591, this day decided. Because of the divergence of views on this important question, we granted certiorari, — U. S. —

Analysis of the terms of the Resolution[3] discloses, first, that Congress declared certain types of contractual provisions against public policy in terms so broad as to include then existing contracts, as well as those thereafter to be made. In addition, future use of such proscribed provisions was expressly prohibited, whether actually contained in an obligation payable in money of the United States or separately "made with respect thereto." This

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3 JOINT RESOLUTION

To assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and

Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

SEC. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight."

Approved, June 5, 1933, 4.40 p. m.

proscription embraced "every provision" purporting to give an obligee a right to require payment in (1) gold; (2) a particular kind of coin or currency of the United States; or (3) in an amount of United States money measured by gold or a particular kind of United States coin or currency.

Having thus unmistakably stamped illegality upon both outstanding and future contractual provisions designed to require payment by debtors in a frozen money value rather than in a dollar of legal tender current at date of payment, Congress—apparently to obviate any possible misunderstanding as to the breadth of its objective—added, with studied precision, a catchall second sentence sweeping in "every obligation", existing or future, "payable in money of the United States", irrespective of "whether or not any such provision is contained therein or made with respect thereto." The obligations hit at by Congress were those "payable in money of the United States." All such obligations were declared dischargeable "upon payment, dollar for dollar, in any coin or currency [of the United States] which at the time of payment is legal tender for public and private debts." It results that if petitioners' claims rest upon "obligation[s] . . . payable in money of the United States", by the terms of the Resolution they shall be discharged upon payment of current legal tender dollars equal to the number of dollars promised in gold or a particular kind of money. Decision must therefore turn upon the nature of the "obligation[s] . . . incurred" by the railroad in its bond contracts of 1912.

These bonds provide that, "For a description of the property and franchises mortgaged, the nature and extent of the security, the rights of the holders of said bonds under the same and the terms and conditions upon which such bonds are issued and secured, reference is made to the . . . Mortgage." In determining the nature of the railroad's obligation, we, accordingly, look both to the mortgage and the bonds.

It appears that—

> The railroad executed the mortgage in 1912 to the Guaranty Trust Company of New York as trustee, to secure forty year mortgage bonds "limited to an aggregate principal amount of One Hundred Million Dollars ($100,000,000.00) at any one time outstanding . . . to be payable on the first day of

January, 1952, with interest at the rate of five per cent per annum payable semi-annually . . ."; the bonds are payable optionally in foreign currencies as indicated above; registration in New York is required of bonds subjected to registration; to be valid all bonds must be authenticated by the Guaranty Trust Company in New York; non-coupon bonds and coupon bonds are interchangeable upon request, but non-coupon bonds contain no option for payment in foreign currencies; the New York trustee is granted broad supervisory powers (for the benefit of the bondholders) over finances and operations of the railroad; the railroad is required to keep an office in New York where bonds and coupons can be presented for payment, but is not required to keep any foreign offices; in the event of default in payment of bonds or coupons, the New York trustee is authorized, through its agents or attorneys, to take charge of the mortgaged property, to sell under foreclosure proceedings in the United States, and to protect bondholders' interests by employment of attorneys and institution of judicial proceedings either in law or equity, "for the equal benefit of all holders of . . . outstanding bonds and coupons"; should the Guaranty Trust Company resign as Trustee, the bondholders may designate another which, however, "must always be a trust company having an office in the Borough of Manhattan, in the City of New York, N. Y."

The mortgaged property is located in the United States; the trustee was required to be a New York trust company; enforcement of the trust security, collection of bonds and interest, employment of attorneys, institution of legal proceedings and distribution of assembled assets, were all responsibilities placed upon the trustee located in New York, and obviously contemplated that any necessary judicial proceedings would be had in this country under the governing law of the United States. Both the mortgage and bonds are domestic obligations, and the law of this country must determine their interpretation, their nature, and the obligations enforceable under them[4] The Joint Resolution thus must govern if the

[4] Liverpool Steam Co. *v.* Phenix Ins. Co., 129 U. S. 397, 453, 459; United States *v.* North Car., 136 U. S. 211, 222; R. *v.* International Trustee, [1937] 2 All E. R. 164; Mount Albert Borough Council *v.* Australasian, etc., Assurance Soc., Ltd., [1938] A. C. 224; Judgment of the Supreme Court of Sweden, (Jan. 30, 1937), reported in Bulletin de L'Institut Juridique International, April, 1937, pp. 327, 334.

bonds are, within its terms, "obligation[s] . . . payable in money of the United States."

In their construction of the bonds, petitioners urge that each of the alternative promises to pay in a foreign currency is a separate and independent "obligation" to pay. From this, they argue that the only "obligation" for which enforcement is here sought is one "payable" in guilders which must be treated as though it were an entirely separate and independent promise of the railroad. But the railroad undertook only a single obligation to repay the money it borrowed. Repayment of that money might be called for in any one, but only one, of the five different types of money. This, however, did not divide the railroad's undertaking to repay into five separate and independent obligations to repay the same loan. Payment under the contract in any one of the currencies selected by the bondholder would discharge the entire single obligation of the debtor. Payment in guilders, after payment in guilders was elected, would nonetheless discharge an obligation which prior to such election and payment was an obligation also payable in United States dollars. The language of the Joint Resolution was intended to refer to a monetary obligation in its entirety. That which the Joint Resolution made dischargeable was the debt—the monetary obligation to pay. This debtor's obligation was a monetary obligation. The foreign currencies promised were not bartered for as commodities, but their function was that of money to be paid in countries in which they were legal tender and upon them interest was to be paid.[5] Interest is not paid on commodities but on monetary obligations. And these promises in alternative currencies were not separate and independent contracts or obligations, but were parts of one and the same monetary obligation of the debtor.

The point is made, however, that this obligation of the railroad was never payable in United States money because the option to receive payment in dollars has never been exercised. Conceding that one meaning of "payable" is "capable of being paid", petitioners nevertheless urge that the use of this meaning should not be attributed to Congress, but that instead we must narrow and restrict "payable" to mean an absolute and unconditional obligation. But the railroad since the day its bonds were issued, was under obligation to hold

[5] Holyoke Power Co. v. Paper Co., 300 U. S. 324, 335-336; Norman v. B. & O. R. Co., 294 U. S. 240, 302

tself prepared to pay United States money—or any one of the ptional currencies. And, on the date the Resolution went into ffect, no election had been made so that the railroad was, at that ime, still under obligation to pay dollars. If prior to election by the olders the railroad was under no obligation to pay United States oney, it was likewise under no obligation to pay any money, United States or otherwise, although it then had outstanding a $100,000,-00.00 mortgage on all of its properties. Neither in logic nor law can t be said that the railroad's promise, secured by a $100,000,000.00 ortgage, to pay in any one of five currencies was not an obliga-ion payable in any currency until express election of payment n a particular currency was made. Legal rights and obligations ame into existence when the contracts for purchase of the bonds ere completed. Since the words "obligation[s] . . . payable n money of the United States" are clearly broad enough to require nclusion of these multiple currency obligations, there is no justifi-ation here for restricting the meaning of these words of the Reso-ution. Consideration of the evils aimed at leaves no doubt but that uch restriction would do violence to the intention of the Congress.

The report of the Senate Committee on the Resolution opens with vords revealing its purpose. It is there stated that "Certain ques-ions of interpretation have arisen with respect to the legislation mpowering the President to prevent the withdrawal and hoarding f gold and the provision of the Thomas amendment[6] *making all oins and currencies legal tender for all debts.* Additional and im-nediate legislation is necessary to remove the disturbing effect of his uncertainty and to insure the success of the policy by closing ossible *legal loopholes* and removing inconsistencies."[7] (Italics upplied.) The comprehensive language of the Resolution was in-ended—as by its terms it did—to close "legal loopholes" con-ributing to "dislocation of the domestic economy which would be aused by such a disparity of conditions in which, it is insisted, those lebtors under gold clauses should be required to pay one dollar and ixty-nine cents in currency while respectively receiving their axes, rates, charges and prices on the basis of one dollar of that urrency."[8] Here, the admitted purpose of the multiple currency rovision supplementing the gold clause was the same as that of the

6 48 Stat. 51, § 43.

7 Sen. Rep. No. 99, 73d Cong., 1st Sess.

8 Norman v. B. & O. R. Co., *supra*, 315-16.

gold clause itself, that is, to afford creditors of United States debtors on domestic money obligations contractual protection against possible depreciation of United States money. It was a plan, wholly legal when contrived, specifically designed to require debtors to pay 1912 gold dollars or fixed amounts in foreign currencies which were the exact equivalents of gold dollars in 1912. In purpose, pattern and, as shown here, in result, the multiple currency provision is identical with the practice Congress declared to be against public policy, and it furthers a mischief which the Resolution was enacted to end.

The mischief Congress intended to end will not end if the multiple currency provision of these bonds is held to be unaffected by the Resolution. Congress sought to outlaw all contractual provisions which require debtors, who have bound themselves to pay United States dollars, to pay a greater number of dollars than promised. The Resolution intended that debtors under obligation to pay dollars should not have their debts tied to any fixed value of particular money, but that their entire obligations should be measured by and tied to the actual number of dollars promised, dollar for dollar. A multiple currency provision was inserted in these bonds in order to tie this debtor to a fixed value of particular money, and, relying upon this provision, petitioners demand more dollars than promised in the bonds. The provision is thus clearly at cross purposes with the Resolution. By a simple mathematical calculation translating guilder value into dollar value, petitioners will, if the Resolution is not applied to them, enforce the obligations of this debtor, not dollar for dollar as the Resolution provides, but more than a dollar and a half for every dollar borrowed, and the purpose of Congress, that no such premium need be paid, will be completely defeated.

When the Joint Resolution was enacted the railroad had by its promise assumed obligations to pay its bonds in dollars; its obligations were therefore "payable in money of the United States", and so fall squarely within the letter, as well as the spirit of the Resolution making obligations dischargeable by payment of current United States legal tender money.

There remains the argument of petitioners that the Resolution, if construed to forbid enforcement of the option to demand payment in guilders, nullifies contractual rights in violation of the Fifth Amendment to the Constitution. But, as has already been pointed

out, the contracts on which the claims for guilders rest are domestic obligations, controlled by and to be interpreted under the law of the United States. And contracts between private parties cannot create vested rights which serve to restrict and limit an exercise of a constitutional power of Congress.[9] These bonds and their securing mortgage were created subject not only to the exercise by Congress of its constitutional power "to coin money, regulate the value thereof, and of foreign coin," but also to "the full authority of the Congress in relation to the currency." The extent of that authority of Congress has been recently pointed out: "The broad and comprehensive national authority over the subjects of revenue, finance and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers."[10]

Under these powers, Congress was authorized—as it did in the Resolution—to establish, regulate and control the national currency and to make that currency legal tender money for all purposes, including payment of domestic dollar obligations with options for payment in foreign currencies. Whether it was "wise and expedient" to do so was, under the Constitution, a determination to be made by the Congress.[11] The Resolution that made these creditors' bonds dischargeable in the same United States legal tender which other creditors in this country must accept, does not contravene the Fifth Amendment.

Our conclusion that the Joint Resolution makes petitioners' claims in bankruptcy allowable dollar for dollar renders consideration of subsidiary questions unnecessary.

The judgments are

Affirmed.

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9 Norman v. B. & O. R. Co., *supra*, 306-311; cf., Home Bldg. & L. Assn. v. Blaisdell, 290 U. S. 398, 435.

10 Norman v. B. & O. R. Co., *supra*, 303.

11 Juilliard v. Greenman (Legal Tender Case), 110 U. S. 421, 448, 450.

SUPREME COURT OF THE UNITED STATES.

Nos. 384 and 495.—October Term, 1938.

Guaranty Trust Company of New York, as Trustee Under St. Louis Southwestern Railway Company First Terminal and Unifying Mortgage, Dated January 1, 1912, Petitioner, 384 *vs.* Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, et al. Chemical Bank & Trust Company, as Trustee Under St. Louis Southwestern Railway Company General and Refunding Mortgage, Dated as of July 1, 1930, Petitioner, 495 *vs.* Berryman Henwood, Trustee of St. Louis Southwestern Railway Company, Debtor, and St. Louis Southwestern Railway Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[May 22, 1939.]

Mr. Justice Stone, dissenting.

Without considering the question whether the bondholders in these cases have properly exercised their options, I cannot agree that the Joint Resolution of Congress of June 5, 1933, has set at naught the promise of the bonds to pay guilders to the holders at their election.

In each case the bonds contain alternative and mutually exclusive undertakings. The holder could if he wished demand payment in United States gold dollars of a fixed standard or their equivalent in United States currency. The alternative promise is for payment abroad of specified amounts of any one of several foreign currencies, without reference to their gold value at the time of pay-

ment. Its performance is as independent of gold or gold value as if it had called for the delivery of a specified amount of wheat, sugar or coffee, or the performance of specified services.

Any construction of the gold clause resolution which would in the circumstances of the present case preclude payment in foreign money would equally forbid performance of an alternative promise calling for the delivery of a commodity or the rendition of services. Hence the decisive question is whether the resolution admits of a construction which would compel one whose contract stipulates for delivery at his option of a cargo of sugar to accept instead payment of a specified amount in legal tender dollars, merely because by the terms of his contract he might have demanded, though he did not, an equal number of gold dollars.

When the Joint Resolution was adopted there were many obligations of American citizens payable abroad exclusively in foreign currency, and the attendant devaluation of the dollar greatly increased the burden of performance of such contracts through the necessity of purchasing with depreciated dollars the foreign exchange required for their fulfillment. But it must be conceded that Congress did not undertake to relieve any American citizen of that burden, and it is not contended that the Joint Resolution provided for the discharge of any obligations payable in foreign currency, not measured in gold, except in the case where the promise to pay in foreign money is an alternative for the promise to pay in dollars. After devaluation of the dollar the burden on American citizens of meeting obligations abroad by payment in foreign currencies may well have been as great whether the undertaking was unconditional or to pay upon a condition which had happened, or whether the obligation was to pay in a foreign currency or to supply goods which must be acquired by the expenditure of depreciated dollars.

We can find nothing in the legislative history of the Joint Resolution or its language to suggest any Congressional policy to relieve from the one form of obligation more than another, or to indicate that the resolution was aimed at anything other than provisions calling for payment in gold value or gold dollars or their equivalent, which Congress explicitly named and described as the evil to be remedied, both in the Joint Resolution itself and in the committee reports attending its adoption. See Sen. Rep. No. 99, 73d Cong., 1st Sess.; H. R. Rep. No. 169, 73d Cong., 1st Sess.

The Joint Resolution of Congress and the committee reports make no mention of obligations dischargeable in foreign currencies or by

delivery of commodities or performance of services. If it was the purpose of Congress to control such obligations through the exercise of its power to regulate the value of money, that fact must be discoverable from the language of the resolution or from some underlying public policy, to which its words and the records of Congress give no clue. Shortly before the adoption of the resolution, Congress had authorized the President to devalue the dollar. By appropriate legislation and executive action, gold payments by the Treasury had been suspended, the hoarding of gold and its exportation had been prohibited, and all persons had been required to deliver gold owned by them to the Treasury. See *Norman* v. *Baltimore & Ohio Railroad Co.*, 294 U. S. 240, 295 *et seq.* It was obvious that these measures, aimed at the suppression of the use of gold as a standard of currency value, would fail of their purpose unless all payments in gold of the established standard or its equivalent were outlawed. The reports of the Congressional committees recommending the adoption of the resolution indicate clearly enough that such was its purpose. They give no hint that more was intended. See Sen. Rep. No. 99, 73d Cong., 1st Sess.; H. R. Rep. No. 169, 73d Cong., 1st Sess.

The recitals of the Joint Resolution declare that it is aimed at "the holding of or dealing in gold" and the "provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby". No other purpose is suggested. The enacting part of the resolution proscribes "every provision . . . which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby", and declares "Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender . . . ." "Obligation", it states, "means an obligation . . . payable in money of the United States". Thus the resolution proclaims that it is aimed at gold clauses and declares, if language is to be taken in its plain and most obvious sense, that provisions requiring payment in gold dollars or measured by gold are illegal and that every promise or obligation

"payable in money of the United States" (not in guilders) shall be discharged "dollar for dollar" in legal tender currency.

To arrive at the conclusion that the resolution compels the present bondholders to accept dollars instead of the guilders for which they have contracted, it is necessary to say that "obligation", which the Joint Resolution defines as obligation "payable in money of the United States" and requires to be discharged "dollar for dollar" in legal tender, includes the obligation payable in guilders. This difficulty is bridged by recourse to a major operation of statutory reconstruction. It is said that "obligation" means, not the obligation or promise which is defined by the resolution as that "payable in money of the United States" and in which the gold clause provision is "contained" and "with respect" to which the provision is "made", but includes all obligations, although not dischargeable in money of the United States or in gold, which may be written into the instrument or document containing alternative promises, one of which is to pay in dollars. The "obligation" of the resolution "with respect" to which the gold clause is "made" is thus treated as synonymous with the instrument containing the multiple obligations, and all the provisions in it (not alone the promise to pay dollars) are now held to be dischargeable in dollars merely because one of the alternative promises "contained" a provision payable in "money of the United States", although the bondholder is entitled by his contract to demand performance of a promise to pay guilders not measured by gold. Thus, starting with a resolution avowedly directed at gold clauses, we are brought to the extraordinary conclusion that a promise to pay foreign currency is void if expressed in an instrument containing an alternative promise to pay in money of the United States whether of gold standard or not.

tr. The argument is not persuasive both because it rests upon a strained and unnatural construction of the resolution and upon an assumption that there was a Congressional policy to strike down provisions for the alternative discharge of dollar obligations by payment in foreign currency not tied to gold, which finds no support in the language of the Joint Resolution or its legislative history. It seems fair to suppose that if Congress proposed to end all possibility of creating an international market for bonds payable in dollars or alternatively abroad in foreign currencies, both without gold value, it would have given some more explicit indication of that purpose than is exhibited by the Joint Resolution. Even if

we assume that Congress would have struck down such alternative currency clauses had it considered the matter, we are not free to do what Congress might have done but did not, or what we may think it ought to have done to lessen the rigors of our own currency devaluation for those who had made contracts for payment abroad in foreign currency without gold value.

In any case it seems plain that if Congress had made the attempt it would not have chosen to do so in terms which, if the Court's construction of the Joint Resolution be accepted, are broad enough to strike down every conceivable provision for payment in foreign currency, delivery of commodities, or performance of services as an alternative for a promise to pay dollars, whether of gold standard or not.

The Chief Justice, Mr. Justice McReynolds and Mr. Justice Butler concur in this opinion.

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